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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOSE GUILLEN, in his official capacity as Jury Commissioner, Petitioner, v. THE SUPERIOR COURT OF IMPERIAL COUNTY, Respondent;	D049769 (Imperial County Super. Ct. No. CF8268)
REGGIE D. COLE, Real Party in Interest.	

PETITION for writ of mandate challenging an order of the Superior Court of Imperial County, Donal B. Donnelly, Judge. Petition granted.

Jose Guillen, as Jury Commissioner for the Superior Court of Imperial County (Guillen), filed a petition for writ of mandate challenging the trial court's order enforcing the subpoena duces tecum served on Guillen by defendant Reggie D. Cole requiring

Guillen to disclose certain State of California Department of Motor Vehicles (DMV) information in his (Guillen's) possession in connection with Cole's investigation into whether the jury selection process managed by Guillen complies with constitutional standards. Guillen contends the trial court erred because: (1) Code of Civil Procedure section 197[1] precludes his disclosure of that DMV information to anyone; (2) Cole does not have a constitutional right to pretrial discovery of the requested DMV information; and (3) Cole did not make the requisite showing for disclosure of that DMV information. We conclude Cole has not shown the DMV information is relevant under the applicable standard for disclosure of information necessary to his investigation of his reasonable belief that underrepresentation of cognizable groups may be the result of improper jury selection practices. We therefore grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2001, an information was filed charging Cole with the November 28, 2000 first degree murder of Eddie Eugene Clark (Pen. Code, § 187, subd. (a)). The information alleged the special circumstance that Cole intentionally killed Clark by means of lying in wait within the meaning of Penal Code section 190.2, subdivision (a)(15), thereby making him potentially eligible for the death penalty. The information also charged that Cole, while an inmate serving a life sentence for a prior first degree murder conviction on December 22, 1995, assaulted Clark with a deadly weapon and by

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1 All statutory references are to the Code of Civil Procedure unless otherwise specified.

means of force likely to produce great bodily injury, making him potentially eligible for the death penalty (Pen. Code, § 4500.).

On August 3, 2006, Cole filed a motion to compel disclosure of jury information, requesting an order directing Guillen to provide certain data and other materials relating to the jury selection process during the period from January 1, 2005, through August 1, 2006, including:

> "1. Copies of the merged list used as the basis for all jury summons[es] from Imperial County which is a combination of the [DMV] list and the voter registration lists for Imperial County compiled pursuant to [CCP] §§ 197 and 198.
>
> "2. Copies of any and all source lists for the above described merged list including, but not limited to, the source lists as defined in CCP § 197.
>
> "3. Copies of the master jury list as defined in CCP § 198.5, or whatever group of names is compiled from the above merged list to be used annually or periodically by the Jury Commissioner [i.e., Guillen], which list is the basis from which jury summons[es] that are sent to individuals for the periods during which jurors are called."

Cole argued that, as an African-American charged with allegations making him potentially subject to the death penalty, it was essential that he be assured of a trial by a jury selected at random from a fair, representative cross-section of the community. In support of Cole's motion, he submitted the declaration of Christopher J. Plourd, his trial cocounsel, in which Plourd stated in part:

> "5. I am informed and believe, based upon census data and my familiarity with jury composition studies and research, that there is a disparity between the number of Hispanics and/or African Americans living in Imperial County and the number of Hispanics and/or African Americans who are both called to serve, and those

> who actually serve on juries in Imperial County. I am also informed and believe that there is an issue as to whether or not the system for selection in Imperial County is random."

Guillen opposed Cole's motion, arguing it was an inappropriate vehicle for discovery because a subpoena duces tecum is required to obtain disclosure of documents from a third party. Furthermore, citing *People v. Jackson* (1996) 13 Cal.4th 1164 (*Jackson*), he argued Cole did not show good cause under *Jackson*'s standard for discovery of information regarding jury selection procedures: "[U]pon a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion, the court must make a reasonable effort to accommodate the defendant's relevant requests for information designed to verify the existence of such underrepresentation and document its nature and extent. [Citation.]" (*Id.* at p. 1194.) Nevertheless, Guillen stated that he would produce the master jury list, a list of persons excused or excluded from jury service, and general jury selection policies and practices, subject to reasonable limitations, but section 197, subdivision (c) precluded him from disclosing to any "person, organization, or agency" the DMV source list.

On August 14 and 22, Cole served subpoenas duces tecum on Guillen and his staff demanding production of the same documents requested in his (Cole's) motion to compel, including the DMV source list. In support of the subpoenas served on Guillen and his staff, Cole attached a revised declaration of Plourd that stated in part:

> "7. I am informed based upon my preliminary investigation, based upon my understanding of census data, my familiarity with jury composition studies, my research, and my consultation with experts

> that there is a significant disparity between the number of jury eligible Hispanics and/or African Americans living in Imperial County and the number of Hispanics and/or African Americans who are both called to serve, and those who actually serve on juries in Imperial County. I am specifically advised and have learned that, 1.) The list(s) used to summon jurors underrepresents the jury eligible minority population of Imperial County, 2.) That the method(s) used by Imperial County to summon jurors results in significantly less than Twenty [percent] (20%) of persons summoned for jury service, 3.) That a combination of errors makes the Imperial County system non-random, 4.) That [as] the result of the multiple errors and omissions by the Imperial County Jury Commissioner cognizable groups are significantly and not fairly represented on any Imperial County Jury Panels, and 5.) The errors and omissions are known or reasonably should be known to the officials who manage or oversee the Imperial County Jury System."

Guillen and his staff objected to the subpoenas duces tecum, arguing: (1) Cole did not make a particularized showing for discovery under *Jackson*; (2) disclosure of jurors' identifying information would violate the jurors' constitutional privacy rights; and (3) section 197 precluded Guillen from disclosing the DMV source list.

On August 21, the trial court denied Cole's motion to compel because it was an inappropriate mechanism for discovery from third parties, and the court reserved ruling on Guillen's objections to the subpoenas duces tecum.[2]

At a hearing on August 29, Guillen testified he obtains physical possession of the DMV and voter registration source lists, keeps copies, and forwards copies to Jury Systems, Inc. (JSI), the court's jury management technology vendor. JSI then merges the

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2 In denying the motion to compel, the trial court also noted that Plourd's declaration in support thereof was "vague, and conclusory, and lacks any specific showing of any facts that would allow for such a court order."

two source lists and deletes duplicate names and (apparently) persons permanently excused from jury service, resulting in a master list that is then used to create summonses for jurors. The trial court overruled Guillen's objections to the subpoenas duces tecum and ordered him to disclose the names, dates of birth, and zip codes of persons on the DMV source list. The court stated in part:

> "I've reviewed the supplemental declaration by Mr. Plourd. And although it's still in some ways conclusory, it may lack the level of detail preferred, I am going to find that particularly with regard to Paragraph 7 . . . that there is sufficient good cause and materiality shown. Defense is basically asserting by way of counsel that they seek discovery in order to investigate a potential challenge to the jury selection process in Imperial County.
>
> "And I'll specifically note counsel represents that he has conferred with an expert witness and has learned certain information from that witness that requires certain information be revealed to investigate whether there is, in fact, a significant underrepresentation of jury eligible population in Imperial County. [¶] . . . I do find at this point that good cause and materiality [have] been shown for the subpoena."

The court also concluded that Cole's constitutional right to a fair trial outweighed section 197's prohibition against disclosure of the DMV source list. The court ordered Guillen's counsel to draft a protective order precluding any disclosure of personal identifying juror information and any contact with persons on those lists without court approval.

Guillen moved for reconsideration of the trial court's order for production of the DMV source list, arguing the clear language of section 197 precluded disclosure of the DMV source list "to any person, organization, or agency." He argued such disclosure would be a misdemeanor and could subject him to a civil penalty. He argued the DMV information was unnecessary for Cole's investigation because "the information contained

on the DMV Source List is the same information contained on the master jury list." He concluded: "Accordingly, any information contained in the DMV Source List would ultimately be included in the master jury list which [the] Superior Court and Jury Commissioner have already agreed to produce subject to a protective order."

On October 12, the trial court issued a protective order barring unauthorized disclosure of information obtained by Cole through discovery.

Cole opposed Guillen's motion for reconsideration, arguing that the master jury list "does not contain the same information as the source list as there are two phases whereby information from the source list is diluted." He further argued that section 197, subdivision (b)'s presumption of a representative cross-section of the population "is only sound where the duplicate names have properly been extracted. The presumption is not sustained where additional names, such as those coded as permanently excused, have been deleted. [¶] These procedures cannot be verified without the source list. The only way to screen the correctness of the Master List is to test it against the source list."

At the October 16 hearing on Guillen's motion for reconsideration, his counsel argued and represented to the court based on her conversations with Guillen as follows:

> "It would be duplicative to provide the [DMV] source list because the master jury list, which the Court has ordered the Jury Commissioner's Office to provide to defense counsel, does contain the information which is on the source list. [¶] The master jury list is simply a merge of the DMV list with the Voter Registrar's list and duplicates are then eliminated.
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> "Now, there was in [Guillen's] response some comments which alluded to the fact that certain names are eliminated from that master jury list, and I have verified that that is not the case. [¶] There may be next to the names a certain code if a particular individual is

> deceased or permanently excused. They're not removed from the list, but they may be coded as such, i.e., 'deceased' or 'permanently excused,' and therefore a juror summons would not be issued to that particular person, but they're not removed from the list, per se. [¶] So, with respect to the factual issue, there would not be any additional benefit to provide the source list to defense because the same information will be contained in the master jury list which the Court has already ordered us to provide under a protective order."

Guillen's counsel confirmed that the only names removed from the merged list were duplicate names and not those persons coded as deceased or permanently excused, who remained on the master jury list (albeit coded as such so as not to be summoned). Cole's counsel objected to the trial court's consideration of that new information presented by Guillen's counsel, arguing it was inadmissible hearsay and contrary to Guillen's testimony at the prior hearing. Cole's counsel argued that without disclosure of the DMV source list he would be unable to verify whether JSI follows that procedure. The trial court denied Guillen's motion for reconsideration, stating in part:

> "I'll simply note that although [section 197, subdivision (c)] appears to contain an absolute prohibition, taken within the context of the entire Act, [the] Court notes that one important principle of the Act is the guarantee that any defendant be tried by a full cross section of the community. . . . [¶] There is appellate case law, both federal and state, which entitle[s] a defendant to seek discovery regarding jury selection and potentially challenge the jury selection process. And I'll simply reconfirm the Court's earlier finding that the overall intent of the Act, as well as the constitutional and due process rights of a criminal defendant[,] mandate disclosure of the source list in this case. Any harm or prejudice by that disclosure is cured by a strict protective order, including the threat of sanctions upon unauthorized disclosure. [¶] . . . [¶]
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> ". . . [Y]ou have a defendant seeking the right to, at least, discover a potential challenge and allow [his] own consultant, an expert witness consultant, to review the original materials. I think that that's a

> lawful purpose. It's an authorized purpose. And to forbid disclosure would raise a risk that the Defendant's rights are violated. [¶] . . . [¶]
>
> "Again, the overall potential defense challenge is whether there's any part of this process here that deprives the Defendant of the right to a trial by a cross section of the community. So I think the expert consultant for the defense has the right to review and compare original documents with the asserted process itself. And to deny the defense that right would deny them due process. [¶] . . . [F]or purposes of this specific death penalty case, the matter before the [C]ourt, that disclosure of the [DMV] source list is mandated."

On November 13, Guillen filed the instant petition for writ of mandate, challenging the trial court's order directing him to produce the DMV source list. On November 15, we stayed the trial court's August 29 order requiring disclosure of the DMV source list. Cole filed a response to the petition. On November 27, we issued an order to show cause why the relief requested should not be granted. On December 6, we issued an order stating we would consider the instant petition together with the petition in *Roddy v. Superior Court* (D049796). Guillen filed a reply to Cole's response. On January 19, 2007, we granted the request of the California Public Defenders Association to file, and accepted as filed, an amicus brief in support of Cole. Subsequently, we accepted as filed Guillen's answer to that amicus brief.

DISCUSSION

I

Criminal Defendant's Constitutional Right to Jury Drawn from a Representative Cross-Section of the Community

"Under the federal and state Constitutions, an accused is entitled to a jury drawn from a representative cross-section of the community. (U.S. Const., 6th Amend.; Cal.

Const., art. I, § 16; [citations].) That guarantee mandates that the pools from which juries are drawn must not systematically exclude distinctive groups in the community. [Citation.]" (*People v. Horton* (1995) 11 Cal.4th 1068, 1087-1088 (*Horton*).) "The federal and state guarantees are coextensive, and the analyses are identical. [Citations.]" (*People v. Howard* (1992) 1 Cal.4th 1132, 1159.)

"[T]o establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." (*Duren v. Missouri* (1979) 439 U.S. 357, 364.) "The relevant 'community' for cross-section purposes is the community of qualified jurors in the judicial district in which the case is to be tried. [Citations.]" (*People v. Currie* (2001) 87 Cal.App.4th 225, 233.)

Regarding the third element of the *Duren* test, the California Supreme Court stated: "A defendant does *not* discharge the burden of demonstrating that the underrepresentation was *due to systematic exclusion merely by offering statistical evidence of a disparity*. A defendant *must show*, in addition, that *the disparity is the result of an improper feature of the jury selection process*. [Citation.] Riverside County relies on voter registration lists and [DMV] records of registered drivers and holders of identification cards, which are merged into a master list. We have held that such a list ' " 'shall be considered inclusive of a representative cross-section of the population' "

where it is properly nonduplicative.' [Citation.] The record reveals that Riverside County has undertaken reasonable efforts to eliminate duplicate entries and, as the trial court found, there was no evidence how (if at all) the remaining duplicates would have affected the composition of the jury draw." (*People v. Burgener* (2003) 29 Cal.4th 833, 857, italics added (*Burgener*).)

"When a county's jury selection criteria are neutral with respect to race, ethnicity, sex, and religion, the defendant must identify some aspect of *the manner in which those criteria are applied* (the probable cause of the disparity) that is constitutionally impermissible. [Citations.]" (*Horton, supra*, 11 Cal.4th at p. 1088.) "The third prong requires defendant to show the state selected the jury pool in a constitutionally impermissible manner that was the probable cause of the disparity. [Citation.]" (*People v. Ochoa* (2001) 26 Cal.4th 398, 427.) "Statistical underrepresentation of minority groups resulting from race-neutral . . . practices does not amount to 'systematic exclusion' necessary to support a representative cross-section claim. [Citations.]" (*People v. Danielson* (1992) 3 Cal.4th 691, 706, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)

Alternatively stated, " '[e]vidence that "race/class *neutral* jury selection processes may nonetheless operate to permit the de facto exclusion of a higher percentage of a particular class of jurors than would result from a random draw" is insufficient to make out a prima facie case. [Citation.]' " (*People v. Danielson, supra,* 3 Cal.4th at p. 706.) For example, "the failure of a particular group to register to vote in proportion to its share of the population cannot constitute improper exclusion attributable to the state.

[Citation.] So long as the state uses criteria that are neutral with respect to the underrepresented group, a defendant cannot satisfy *Duren*'s third prong by showing the state could have adopted other measures to improve further the group's representation. [Citation.] The challenged state action must be the probable *cause* of the disparity [citation] . . . ." (*People v. Ochoa, supra*, 26 Cal.4th at pp. 427-428.)[3]

A jury commissioner is not "required to implement racially disparate practices to correct underrepresentation caused by factors unrelated to exclusionary features of the jury selection process." (*People v. Currie, supra*, 87 Cal.App.4th at p. 237.) Furthermore, "[s]peculation as to the source of the disparity is insufficient to show systematic exclusion [citation], as is evidence the disparity is unlikely to be a product of chance [citation] or has endured for some time [citation]." (*Burgener, supra*, 29 Cal.4th at p. 858.) Expert opinion regarding the cause of any disparity, if unsupported by statistical or other empirical evidence, is merely speculation and is insufficient to show that disparity was the result of improper systematic exclusion. (*Horton, supra*, 11 Cal.4th at pp. 1089-1090; *People v. Cummings* (1993) 4 Cal.4th 1233, 1278-1279 (*Cummings*).)

In investigating whether a claim of an underrepresentative jury selection process may exist, a defendant has certain rights to discovery. Those pretrial discovery rights apparently are based on a defendant's Fourteenth Amendment right to due process,

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3 Similarly, a "defendant cannot demonstrate systematic exclusion based upon the even-handed application of a neutral criterion, such as hardship [excuses]. [Citation.]" (*People v. Howard, supra*, 1 Cal.4th at p. 1160.)

including the right to a fair trial. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 805-806, fn. 18.) In *Jackson*, the California Supreme Court stated:

> "Here we consider not whether defendant has made a prima facie case, but the prior question of whether defendant was wrongly denied the discovery of information necessary to make such a case. A defendant who seeks access to this information is obviously not required to justify that request by making a prima facie case of underrepresentation. Rather, *upon a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion, the court must make a reasonable effort to accommodate the defendant's relevant requests for information designed to verify the existence of such underrepresentation and document its nature and extent.* (Cf. *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 93 [260 Cal.Rptr. 520, 776 P.2d 222] [complaints of excessive force by arresting police officers discoverable by defendant upon 'reasonable belief.'].)" (*Jackson*, *supra*, 13 Cal.4th at p. 1194, italics added.)

"[A] 'reasonable belief' is simply a 'conviction of mind . . . *arising by way of inference'* [citation], a 'belief begotten *by attendant circumstances, fairly creating it, and honestly entertained*.' [Citation.]" (*City of Santa Cruz*, *supra*, 49 Cal.3d at p. 93.)[4] Regardless of

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4 In *City of Santa Cruz*, the court concluded the defendant had shown such a reasonable belief in the circumstances of that case: "Counsel's statement of 'belief' that the City 'may' have other complaints of excessive force against the officers in question constitutes a rational inference from the facts of the pending litigation. The police reports state that one of the arresting officers struck defendant with a closed fist and that both officers subsequently wrestled him to the ground. Counsel's affidavit avers that the officers continued to apply unnecessary and excessive force even after defendant was handcuffed and subdued. While the recited facts do not, of course, establish that the force used was in fact excessive, it is altogether fair and rational, on the basis of such facts and averments, to entertain a 'reasonable belief' or inference that the same officers may have been accused of the use of excessive force in the past, and that such information may be found in their personnel records." (*City of Santa Cruz v. Municipal Court, supra,* 49 Cal.3d at p. 93, fn. omitted.)

a defendant's constitutional right to pretrial discovery, "some of the information sought, such as master lists of jury pools, as well as general jury selection policies and practices, are judicial records that are or should be available to the public. [Citations.]" (*Jackson*, *supra*, at pp. 1194-1195.)

II

Trial Jury Selection and Management Act Generally

In 1988, the Trial Jury Selection and Management Act (§§ 190 et seq.) (the Act) was enacted. (Stats. 1988, ch. 1245, § 2.) Section 191 provides:

> "The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship.
>
> "It is the policy of the State of California that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner, in accordance with this chapter."

It is the primary responsibility of the jury commissioner in each county to manage the jury system of the county's trial courts. (§ 195, subd. (c).) Section 195 provides:

> "(a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. . . . [¶] . . . [¶]
>
> "(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she

shall have authority to establish policies and procedures necessary to fulfill this responsibility."

Of particular importance in this case, section 197 provides:

"(a) All persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists.

"(b) *The list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. These two source lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population, within the meaning of subdivision (a).*

(c) The Department of Motor Vehicles shall furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older and who are holders of a current driver's license or identification card . . . . The conditions under which these lists shall be compiled semiannually shall be determined by the director, consistent with any rules which may be adopted by the Judicial Council. . . . *The jury commissioner shall not disclose the information furnished by the Department of Motor Vehicles pursuant to this section to any person, organization, or agency*." (Italics added.)

III

Application of the Jackson Test in This Case

Guillen contends the trial court erred by concluding Cole made a sufficient showing of good cause and materiality and therefore was entitled to discovery of the DMV source list. Guillen asserts that because Cole did not make the requisite

"particularized showing" under *Jackson*, he was not entitled to discovery of the DMV source list.

For purposes of our opinion, we assume arguendo that Cole, in general, made a sufficient "particularized showing" under *Jackson* and, accordingly, is entitled to *some* discovery of information regarding the jury selection process of the Imperial County Superior Court. However, the mere fact Cole made that showing does *not* necessarily entitle him to discovery of any and all information he seeks regarding the jury selection process. On the contrary, as *Jackson* states: "[U]pon a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion, *the court must make a reasonable effort to accommodate the defendant's relevant requests for information designed to verify the existence of such underrepresentation and document its nature and extent*." (*Jackson*, *supra*, 13 Cal.4th at p. 1194, italics added.) Although the California Supreme Court has not (in *Jackson* or in any case subsequent thereto) explained, interpreted, or applied that standard of relevance for discovery of information regarding the jury selection process after a particularized showing has been made, we conclude the relevance of a defendant's request for information must necessarily be considered in relation to the particularized showing made by the defendant.

Alternatively stated, on a particularized showing by a defendant under *Jackson*, the trial court (or jury commissioner on its behalf, as in this case) must make a reasonable effort to produce information that is relevant to potentially verify or prove the existence of constitutionally improper underrepresentation in the jury selection process and

document the nature and extent of that underrepresentation. (*Jackson*, *supra*, 13 Cal.4th at p. 1194.) To the extent certain information sought to be discovered is not relevant to potentially verify, prove, and/or document the underrepresentation reasonably believed to be the result of practices of systematic exclusion pursuant to the defendant's particularized showing, the defendant is not entitled to discovery of that information under *Jackson*. (*Ibid*.) In other words, although a defendant may make a sufficient "particularized showing" under *Jackson* entitling him or her to *some* discovery of information regarding the jury selection process, the scope of that discovery right must be determined in accordance with the showing made by the defendant (i.e., there must be a nexus of relevance between the information sought and the defendant's particularized showing).[5] Accordingly, a defendant does *not* necessarily obtain a right under *Jackson*

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[5] Our interpretation of the requisite relevance under *Jackson* for discovery of jury selection information differs from the general standard of relevance used to determine the admissibility of evidence. (Cf. Evid. Code, §§ 210, 351.) Evidence Code section 210 provides: " 'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." In that context, *People v. Morrison* (2004) 34 Cal.4th 698 stated: "Evidence possessing any tendency in reason to prove or disprove any disputed material fact is relevant. [Citations.] . . . *Evidence is irrelevant, however, if it leads only to speculative inferences*. [Citation.]" (*Id*. at p. 711, italics added.) Because in this case we must determine the relevancy of information (i.e., the DMV source list) sought to be discovered by Cole in relation to his investigation of whether he is being denied his constitutional right to a jury drawn from a representative cross-section of the community, we apply a different standard of relevancy from that under Evidence Code sections 210 and 351. The "relevancy" required for information sought to be discovered under *Jackson* means information must "relate to" the defendant's particularized showing and, in particular, the information's potential relevance or probative value in verifying the existence of underrepresentation and documenting its nature and extent based on the particularized showing made by the defendant. (*Jackson*, *supra*, 13 Cal.4th at p. 1194.)

to essentially audit the *entire* jury selection process on merely making a particularized showing supporting a reasonable belief that underrepresentation exists as the result of a specific practice or practices of systematic exclusion.

Applying our interpretation of *Jackson* to the circumstances in this case, we conclude discovery of the DMV source list is not relevant to potentially verify, prove, or document Cole's claim, as reflected in his particularized showing, of the underrepresentation that he reasonably believes may exist and that is the result of practices of systematic exclusion. Cole's particularized showing is based primarily on the declaration of Plourd (his cocounsel) attached to the subpoenas duces tecum served on Guillen:

> "7. I am informed based upon my preliminary investigation, based upon my understanding of census data, my familiarity with jury composition studies, my research, and my consultation with experts that there is a significant disparity between the number of jury eligible Hispanics and/or African Americans living in Imperial County and the number of Hispanics and/or African Americans who are both called to serve, and those who actually serve on juries in Imperial County. I am specifically advised and have learned that, 1.) The list(s) used to summon jurors underrepresents the jury eligible minority population of Imperial County, 2.) That the method(s) used by Imperial County to summon jurors results in significantly less than Twenty [percent] (20%) of persons summoned for jury service, 3.) That a combination of errors makes the Imperial County system non-random, 4.) That [as] the result of the multiple errors and omissions by the Imperial County Jury Commissioner cognizable groups are significantly and not fairly represented on any Imperial County Jury Panels, and 5.) The errors and omissions are known or reasonably should be known to the officials who manage or oversee the Imperial County Jury System."

Based on the first sentence of that paragraph, it appears Plourd may have a reasonable belief, based on his review of census data and other information, that the number of

Hispanics and/or African-Americans summoned to serve, and/or who actually serve, as jurors in Imperial County are significantly underrepresented when compared to the numbers of persons in those cognizable groups eligible to serve as jurors (e.g., as reflected in census data). However, Plourd's first sentence constitutes, at most, a generalized belief of underrepresentation of cognizable groups in the jury selection process, and does *not*, by itself, make a particularized showing supporting a reasonable belief that such underrepresentation is the result of practices of systematic exclusion. Accordingly, a close analysis of the second sentence of Plourd's declaration is essential to determine what, if any, practices of the Imperial County Superior Court's jury selection system may cause the perceived systematic exclusion of underrepresented cognizable groups.

As quoted above, the second sentence of Plourd's declaration lists five factors that purportedly support a reasonable belief the suspected underrepresentation of Hispanics and/or African-Americans is the result of systematic exclusion. Only the first factor arguably refers or relates to the DMV source list: "1.) The list(s) used to summon jurors underrepresents the Jury eligible minority population of Imperial County."[6] However, as Guillen's testimony at the hearing showed, the list used by the Imperial County Superior

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6 The other four factors appear to relate only to the practices used by the Imperial County Superior Court in summoning jurors based on the master jury list. In any event, those factors are stated in such a generalized and conclusory fashion that we conclude a sufficient particularized showing was not made, based on those other four factors, regarding the relevancy, or the need for discovery, of the DMV source list. (*Jackson*, *supra,* 13 Cal.4th at p. 1194; *Burgener*, *supra*, 29 Cal.4th at p. 858; *Horton*, *supra*, 11 Cal.4th at pp. 1089-1090; *Cummings*, *supra*, 4 Cal.4th at pp. 1278-1279.)

Court to summon jurors is the master list, not the DMV source list. Guillen testified that JSI, a third-party vendor, merges the DMV and voter registration source lists and deletes duplicate names and (apparently) persons who have been permanently excused from jury service, resulting in a master list that is then used to create summonses for jurors.[7] Therefore, the phrase "list(s) used to summon jurors" in Plourd's declaration presumably refers to the merged or master list of names used to summon jurors. The merged or master list has been made available to Cole. Cole did not present any declaration, testimony, or other evidence supporting a reasonable belief that the DMV source list, which is used in forming the merged or master list, underrepresents Hispanic and/or African-Americans as a result of improper systematic exclusion. Cole made no particularized showing, much less a specific allegation, that Guillen's (or JSI's) practice of merging the DMV and voter registration source lists and deleting duplicate names constitutes an improper practice of systematic exclusion or, for that matter, is improperly performed. Cole has not established the relevance of the DMV source list to his investigation of a possible unconstitutional jury pool.

Furthermore, statistical disparities, by themselves, are insufficient to show underrepresentation of a cognizable group is the result of unconstitutional systematic exclusion. (*Burgener, supra*, 29 Cal.4th at p. 857.) Therefore, it cannot be reasonably

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7 Although, as noted above, Guillen's counsel subsequently represented to the trial court, based on her conversations with Guillen, that the names of deceased and permanently excused persons are not actually deleted from the merged or master list, but instead are coded so as not to receive summonses, we presume, for purposes of our opinion, that Guillen's testimony was correct as originally stated.

believed, based solely on an apparent statistical disparity between a cognizable group's representation in the community based on census data and other information and its representation in a master jury list, that either a source list (e.g., the DMV source list) or the practices used in forming that master jury list potentially constitute an improper means of jury selection (i.e., a practice of systematic exclusion that causes the perceived underrepresentation).

Nevertheless, to the extent Plourd's declaration can be interpreted as asserting the DMV source list, or the Imperial County Superior Court's use of that list, constitutes a potentially improper practice under *Jackson*, that assertion is both conclusory and speculative and does not support either a reasonable belief that the perceived underrepresentation of Hispanics and/or African-Americans in the Imperial County Superior Court's jury pool or venire is the result of improper practices of systematic exclusion *or* is relevant to potentially verify, prove, or document Cole's claim, as reflected in his particularized showing, of the underrepresentation that he reasonably believes may exist and that is the result of practices of systematic exclusion. (*Jackson*, *supra*, 13 Cal.4th at p. 1194; *Burgener*, *supra*, 29 Cal.4th at p. 858; *Horton*, *supra*, 11 Cal.4th at pp. 1089-1090; *Cummings*, *supra*, 4 Cal.4th at pp. 1278-1279.) Accordingly, the trial court erred by concluding Cole was entitled to discovery of the DMV source list.[8]

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8 Because we decide this case based on the ground discussed above, we need not decide the other contentions raised by Guillen, including whether section 197, subdivision (c) absolutely bars him disclosing the DMV source list to anyone (e.g., even

DISPOSITION

Let a peremptory writ of mandate issue directing the superior court to: (1) vacate its order denying Guillen's objections to Cole's subpoenas duces tecum to the extent they required Guillen to disclose the DMV source list to Cole; and (2) issue a new order sustaining Guillen's objections to Cole's subpoenas duces tecum to the extent they require disclosure of the DMV source list to Cole. Our November 15, 2006 stay of the superior court's order directing Guillen to disclose the DMV source list is vacated. The parties are to bear their own costs in this writ proceeding.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.

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if disclosure is required by a court order) or whether that statute's provisions may not be "trumped" by a criminal defendant's constitutional rights to due process and a fair trial. Furthermore, by granting the order to show cause in this matter, we have concluded Cole's arguments that Guillen cannot obtain the requested writ relief because of a conflict of interest, lack of standing, laches, and/or "unclean hands" are without merit. (Cf. *Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1056 [issuance of order to show cause constituted a determination that petitioner's remedy at law was not adequate].)